

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GRASSMUECK,

Plaintiff(s),

v.

BENSKY, et al.,

Defendant(s).

NO. C04-2016P

ORDER ON DEFENDANT LYNCH'S
(1) MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION
(2) MOTION FOR PROTECTIVE
ORDER

The above-entitled Court, having received and reviewed:

1. Defendant Lynch's Reply in Support of Motion to Dismiss with Prejudice for: Adequacy of Service/Personal Jurisdiction
2. Plaintiff's Supplemental Brief in Opposition to Motion to Dismiss of Daniel Lynch
3. Motion for Protective Order Halting Discovery From Defendant Daniel J. Lynch

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS HEREBY ORDERED that the motion to dismiss for lack of personal jurisdiction is
DENIED.

IT IS FURTHER ORDERED that the motion for protective order halting discovery is
DENIED.

Discussion

Motion to Dismiss

Defendant Lynch filed a Motion to Dismiss with Prejudice for: Adequacy of Service/Personal Jurisdiction (Dkt. No. 50). The Court has already ruled on the portion of his motion concerning the adequacy of service and has denied his request to dismiss on those grounds (Dkt. No. 56); however,

1 Plaintiff was given an additional 10 days to respond to Defendant Lynch's arguments regarding lack of
2 personal jurisdiction as those arguments were not raised until his reply brief. The Court has read and
3 reviewed all the briefing on the issue of personal jurisdiction and finds good cause to exercise personal
4 jurisdiction over Defendant Lynch.

5 The Receiver seeks, by virtue of this lawsuit, to recover the allegedly fraudulent proceeds of
6 transactions between the receivership company Znetix and Defendant Lynch's former employer, TBG
7 Development, LLC ("TBGD"). Plaintiff alleges that Lynch, a former officer of TBGD, held a 16%
8 interest in the company and profited from its sale. For his part, Defendant Lynch alleges that, at the
9 time of the purchase in August 2000, he had left TBGD for other employment (for which he provides
10 evidence of his hiring).

11 Where the court has received and considered affidavits and/or other discovery materials, a
12 plaintiff need only demonstrate a prima facie showing of jurisdictional facts to avoid dismissal for lack
13 of personal jurisdiction. *See Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.
14 1977). Unless directly contravened, the non-moving party's version of the facts is assumed to be true,
15 and conflicts between the facts are resolved in that party's favor. *Harris Rutsky & Co. Ins. Services,*
16 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003).

17 Defendant Lynch argues that, prior to the sale of TBGD, he had become a "minor member" of
18 the company with no authority to agree or disagree to its sale and that by the date of the sale he was
19 no longer working for TBGD and therefore he is immune from prosecution in this lawsuit. What
20 Defendant Lynch never controverts, however, is that he was an officer of TBGD and that he received
21 proceeds from the sale of the company. It is not necessary that he have negotiated or even signed the
22 purchase agreement which resulted in the proceeds – Plaintiff has made a prima facie showing that, as
23 a principal of the purchased entity, he ratified the actions of the company's agent (Defendant Bensky,

1 who executed the purchase agreement as attorney-in-fact for all the principals of TBGD) by accepting
2 the benefits of that transaction. This is sufficient for purposes of establishing personal jurisdiction.

3 Personal jurisdiction requires that (1) the non-resident defendant must purposefully direct his
4 activity or consummate a transaction with the forum or resident thereof, or purposefully avail himself
5 of the privilege of conducting activities within the forum; (2) the claim must arise out of or relate to
6 the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable.

7 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801-02 (9th Cir. 2004). "Purposeful
8 availment" can be shown by conduct that is both "expressly aimed" at a resident of the forum, and has
9 an effect in the forum. Myers v. Bennett Law Offices, 238 F.3d 1068, 1072 (9th Cir. 2000).

10 Lynch, an East Coast resident, argues that he has not "purposefully availed" himself of the
11 privilege of conducting activities within this forum. However, the activities of Defendant Bensky,
12 acting as Defendant Lynch's agent, can be imputed to him. Myers, Id. at 1073. Znetix was a
13 corporation with its headquarters and principal place of business in Washington and was primarily
14 owned and operated by Kevin Lawrence, a Washington resident. The majority of investors bilked by
15 Lawrence's large-scale corporate fraud were residents of the forum. The actions of agent/defendant
16 Bensky in tendering the sale of TBGD to Znetix constitutes "availment" for purposes of personal
17 jurisdiction and, as found in Thiry v. Atlantic Monthly Co., 74 Wn.2d 679- 681-82 (1968), the
18 exercise of jurisdiction is proper where the allegedly tortious act causes injury within the state of
19 Washington. The Court finds that the first two prongs of the personal jurisdiction test are satisfied.

20 "Reasonableness" in the exercise of personal jurisdiction is determined in the Ninth Circuit
21 through a balancing of seven factors¹, which are examined *infra*:

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23
24 ¹ See Panavision Internat'l, L.P. v. Toeppen, 141 F.3d 1316, 1323 (9th Cir. 1998), citing Burger King Corp. v.
25 Rudzewicz, 471 U.S. 462, 476-77 (1985).

- 1 1. The extent of the defendant's purposeful injection into the forum: The Panavision court
2 found significant injection into the forum where defendant registered Panavision's name
3 as an internet domain name and sent a \$13,000 demand letter (141 F.3d at 1323). In
4 the instant case, an allegedly fraudulent conveyance negotiated with a forum resident
5 which results in the transfer of \$3.3 million out of the state weights this factor in favor
6 of jurisdiction.
- 7 2. Burden on the defendant of litigating in the forum: Defendant Lynch asserts a
8 significant burden in this regard. He is a resident of New York and alleges that he is
9 undergoing considerable financial hardship at this time. This factors weighs against the
10 exercise of jurisdiction.
- 11 3. The extent of conflict the sovereignty of the defendant's state: Both New York and
12 Washington have enacted the Uniform Fraudulent Transfer Act (RCW 19.40.041 and
13 N.Y. Debtor and Creditor Law § 274) and both states adhere to common law
14 formulations of the doctrine of unjust enrichment (*compare* Bailie Communic's, Ltd. v.
15 Trend Business Sys., Inc., 61 Wn.App. 151, 159-60 (1991) and Tip Top Farms, Inc. v.
16 Dairylea Co-op, Inc., 114 A.D. 2d 12, 31 (N.Y.App.Div. 1985). There is no conflict
17 with the sovereignty of Defendant Lynch's home state.
- 18 4. The forum state's interest in adjudicating the dispute: "Washington obviously has an
19 interest in providing a forum for its injured citizens." Hartley v. American Contract
20 Bridge League, 61 Wn.App. 600, 608-09 (1991).
- 21 5. The most efficient judicial resolution of the conflict: Plaintiff represents a aggregation
22 of dissolved Washington corporations and the Court finds that most of the evidence
23 and witnesses are located in this forum. This factor weighs in favor of the exercise of
24 jurisdiction.

1 6. The importance of the forum to the plaintiff's interest in convenient and effective relief:

2 This factor focuses on the burden to Plaintiff of having to litigate elsewhere, though it
3 is generally not weighted as heavily as other factors. Panasonic, 141 F.3d at 1323-24.
4 The Court finds that Plaintiff could pursue its claims in New York if it was necessary,
5 and therefore this factor weighs against jurisdiction in this forum.

6 7. The existence of an alternative forum: As discussed *supra*, Washington is not the only
7 forum available to Plaintiff.

8 Weighing all these factors against one another, it is the finding of this Court that Defendant
9 Lynch has not made a compelling case against the reasonableness of exercising personal jurisdiction
10 over him in this forum. At best, three of the seven factors in the Panasonic test weigh in his favor, and
11 the Court finds that the exercise of personal jurisdiction over this defendant comports with standards
12 of both "fair play and substantial justice." Id. at 1322, *quoting Burger King*, 471 U.S. at 476.

13 Motion for Protective Order

14 Defendant Lynch seeks through this motion to be relieved of the requirement that he respond
15 to Plaintiff's discovery requests while he awaits the Court's ruling on his motion to dismiss. Having
16 now ruled on both issues presented by his motion to dismiss and denied the relief requested, the Court
17 finds that Defendant Lynch's request for a protective order is moot and on that basis denies the
18 motion.

19 **Conclusion**

20 The exercise of personal jurisdiction over Defendant Lynch is in keeping with established legal
21 standards and notions of fair play and justice. He is properly before this Court in this forum and is not
22 entitled to a protective order relieving him of his obligation to respond to properly-propounded
23 discovery requests from Plaintiff. His motion to dismiss and motion for a protective order are
24 therefore both DENIED.

The clerk is directed to provide copies of this order to all counsel of record.

Dated: March __14__, 2006

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

Marsha J. Pechman
U.S. District Judge